Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings	)	WC Docket No. 08-33 WC Docket No. 08-185

REPLY COMMENTS OF INTRADO INC. AND INTRADO COMMUNICATIONS OF VIRGINIA INC.

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Dated: July 21, 2009

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Intrado Inc. and Intrado Communications of Virginia Inc. (collectively, "Intrado"), respectfully make this submission in response to the comments filed in the above-captioned dockets, concerning the Federal Communications Commission's ("Commission" or "FCC") inquiry into "the specific issue of how competition in the provision of the 911 network to the [public safety answering points or] PSAPs and other public safety agencies would impact the provision of public safety services in Virginia."[1] The comments reflect that there is strong support for the further promotion of competitive 911 services, which in turn can deliver the benefits and advantages identified by commenters. In accordance with these comments, the Commission should take expeditious steps to issue a decision in the consolidated arbitration[2] and, without delaying such a decision or compromising the appropriate application of current law, consider initiating a "local competition" rulemaking relative to next generation 911 in competitive marketplace as proposed by the Texas 9-1-1 Entities and discussed more fully below.[3]

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[1] WC Docket Nos. 08-33 and 08-185, *Comment Sought On Competitive Provision of 911 Service By Consolidated Arbitration Proceedings*, 2 (rel. June 4, 2009).

[2] Such a decision should be consistent with proposals set forth by Intrado which will facilitate the rapid and competitive deployment of its 911/E911 services across the nation.

[3] WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Joint Comments of the Texas Commission on State Emergency

I. THE COMPETITIVE PROVISION OF 911/E911 NETWORK SERVICES IS STRONGLY SUPPORTED

A. The Commission's Statutory Mandate Supports the Promotion of the Deployment of Nationwide Competitive 911/E911 Services

In the comments of the Central Telephone Company of Virginia d/b/a Embarq and United Telephone Southeast LLC d/b/a Embarq (collectively, "Embarq"), it cautions the Commission against undertaking a serious consideration of competitive 911/E911 services.[4] Embarq overestimates the preclusive effects of the instant arbitration proceedings on the scope of the Public Notice and vastly underestimates the widely-acknowledged benefits of competitive 911/E911 services for the nation's evolving emergency telecommunications infrastructure. Congress laid the foundation for a broad reassessment of the conventional understanding of 911 service with its New and Emerging Technologies 911 Improvement Act of 2008 ("NET 911 Act"),[5] which is intended to bring about "the next step in th[e] evolution" of the 911/E911 system by "transition[ing] . . . the 911 infrastructure to an IP-enabled system. . . . [that] allows for greater flexibility in the types and amount of information that may be transmitted and shared by emergency service providers."[6]

The first steps in this direction have been taken by discrete competitive services, such as 911 database management services and evolving telematics systems. The kind of advancements needed in the nation's emergency communications system have not occurred in a monopolistic system.[7] As evidenced by the fact that this proceeding was established, what is required at this

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Communications, the Texas 9-1-1 Alliance, the Texas Municipal Emergency Communication Districts Association, the National Emergency Number Association, and the Association of Public Safety Communications Officials International, Inc. at 3 (filed July 6, 2009) ("Texas 9-1-1 Entities Comments").

[4] WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of Central Telephone Company of Virginia d/b/a Embarq and United Telephone Southeast LLC d/b/a Embarq at 5 (filed July 6, 2009) ("Embarq Comments").

[5] Pub. L. No. 110-283, 122 Stat. 2620 (2008).

[6] H.R. Rep. 110-442, 8 (2008), *reprinted in* 2008 U.S.S.C.A.N. 1011, 1013.

[7] *See* WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of The 9-1-1 Industry Alliance at 5 (filed July 6, 2009) ("9IA") ("For years, public safety agencies have had virtually only one choice for 9-1-1 products and services: the incumbent 9-1-1 service provider. Incumbent providers have exercised exclusive, often unilateral discretion as to what those products and services will be and, due to the natural outcomes of

time is either heavy-handed government intervention to compel incumbent 911 providers to make substantial investments to catch up - a notion that seems infeasible economically and one not likely to meet the nation's expectation for timing - or light-handed guidance by reasonably-minded regulators willing to pave the way for true competition. Further competition from the rapid deployment of 911 services using systems - like Intrado's Intelligent Emergency Network®[8] - will build on the discrete competitive 911 services and the benefits achieved to date.[9]

The Texas 9-1-1 Entities reinforce that Commission guidance in the competitive provision of 911/E911 services will aid the "modernization of current 9-1-1 networks toward Internet Protocol-enabled ("IP-enabled") and Next Generation 9-1-1 ("NG9-1-1") systems . . . necessary to keep up with increasing consumer expectations and new communications technologies."[10] The Michigan Internet & Telecommunications Alliance ("MITA") and TelNet linked "[i]nnovative 911 networks [that] will provide public safety agencies with the services and applications to manage more accurate and specific information at greater speed and increased efficiency," overcoming the limitations of "outdated analog technology" and linking

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rate of return regulation, incumbents have had no incentive to innovate in the 9-1-1 space as they have in other sectors.").

[8] As explained in Intrado's Initial Comments, Intrado's Intelligent Emergency Network® "provides the means for seamlessly integrating IP-based voice and data information into the nation's existing 911/E911 network, which allows new applications, like texting and video to be integrated into the 911 system, addresses network congestion and disabled PSAPs through the establishment of dynamic call routing and 'virtual PSAPs,' facilitates ubiquitous exchange of a wide array of emergency-related data between PSAPs and emergency responders, regardless of the originating communications platform, and promotes cooperation between PSAPs and public safety agencies." Intrado Comments at 3.

[9] *See Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(E)(1)(A)*, 24 FCC Rcd 3381, ¶¶ 12, 19 (2009) ("We also believe that this competition will spur innovation amongst carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers"); *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor To Sirius Satellite Radio Inc., Transferee*, 23 FCC Rcd 12348, ¶ 128 (2008) (emphasizing "principle of openness" in ameliorating oligopolistic competition); *Sprint Nextel Corporation and Clearwire Corporation*, Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, 23 FCC Rcd 17570 (2008) (separate statement of Commissioner Copps) (same); *Global Mobile Personal Communications by Satellite (GMPCS)*, Report and Order and Second Notice of Proposed Rulemaking, 18 FCC Rcd 25340, ¶ 72 (2003) (describing technological achievements of competitive telematics providers exceeding Commission E911 accuracy requirements).

[10] Texas 9-1-1 Entities Comments at 3.

such now-"standard form[s] of communication" as text messaging to the 911 network.[11] The Public Utilities Commission of Ohio ("PUCO") noted the manifest benefits available to PSAPs through competition, including "the opportunity to contract with entities that provide most advanced 9-1-1 available, regardless of technology" and the chance to "obtain services tailored more specifically to each county's or PSAP's needs."[12] The 9-1-1 Industry Alliance ("9IA") also "strongly supports institution of competitive 9-1-1 services and believes any impacts are far outweighed by the benefits."[13] 91A explained that "America's 9-1-1 system 'has not evolved effectively as technological change [has] transformed our system of telecommunications.' 'Today's 9-1-1 system is built on an infrastructure of analog technology that does not support many of the features that most Americans expect are part of an emergency response.'"[14] It noted further that "9IA's members have invested heavily in the solutions that they offer today and that they will offer in the coming months. These are the very solutions that must be brought to market in order to make that migration possible; yet many of 9IA's enterprise members continue to face challenges rooted in a delivery model controlled by incumbent 9-1-1 services providers." [15]

As MITA and TelNet observed, "this consolidated proceeding represents a significant opportunity for the Commission to support a framework that will advance innovation in the nation's public safety."[16] The Commission should fully avail itself of the opportunity to secure all the advantages of competitive 911/E911 service by leading the states to determine the shape the nation's twenty-first century emergency telecommunications network in a manner that will

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11 WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of the Michigan Internet & Telecommunications Alliance and TelNet Worldwide, Inc. at 4 (filed July 6, 2009) ("MITA/TelNet Comments").

12 WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of the Public Utilities Commission of Ohio at 7-8 (filed July 6, 2009) ("PUCO Comments").

13 9IA Comments at 2.

14 *Id.*

15 *Id.* at 4.

16 MITA/TelNet Comments at 2.

result in a truly cohesive reliable, redundant nationwide system for the benefit of all Americans.[17]

B. Competitive 911/E911 Service Should Not Be Delayed Pending the Outcome of General Rulemaking

While Intrado supports a thorough exploration of the best ways in which competitive 911/E911 service can be leveraged according to federal and state goals, its deployment should not be legally constrained or delayed by a lengthy general rulemaking proceeding. Although such rulemaking may effectively address stakeholder policy concerns, it should serve as neither a prerequisite for a decision on the instant arbitration matters nor an impediment to the rapid rollout of nationwide 911/E911 service competition.

General rulemaking may be a useful means of promulgating a progressive framework for competitive 911 services, but it is wholly separate from the pending arbitration, which turns on a "mutually beneficial co-carrier arrangement for interconnection of their networks pursuant to Section 251(c)."[18] Emphasizing the FCC's leading role in effectuating "the federal interest" in

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[17] The Commission should reject Verizon's claim that "general policy matters" pertaining to the implementation of competitive 911/E911 services are "properly left to the [state] entities already charged with the development of 911 policies . . ." for the reasons it has previously clearly stated. WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of Verizon at 8 (filed July 6, 2009) ("Verizon Comments"). *See, e.g., E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶ 29, n. 95 (2005) ("*VoIP E911 Order*") ("[W]hile we acknowledge that there are generally intrastate components to interconnected VoIP service and E911 service, we reject any argument that 911/E911 services are purely intrastate and therefore the Commission has no jurisdiction in this area"); Wireless Communications and Public Safety Act of 1999 House Report, H. R. Rep. No. 106-25, 7-8 (1999) ("One section of the legislation directs the FCC to play a much more assertive role in encouraging and assisting the States to deploy these advanced safety systems. . . . The Committee's strong intent is that the Commission must lead, identifying and seeking solutions to overcome barriers for the implementation of end-to-end emergency communications systems."). The Commission has already undertaken substantial efforts to shape the evolving 911 system, especially in regards to the incorporation of new technologies such as prepaid calling cards, mobile satellite systems, and VoIP. *See* Intrado Comments at 19-24; *see also* 9IA Comments at 4-5 ("Another challenge is that the public safety community in the United States is comprised of a multitude of state and local government agencies. . . . [who] are often hampered by political or statutory constraints, and more notably, they are fractured jurisdictionally and geographically which is particularly instructive with respect to the fact that monopoly 9-1-1 service providers often have regional authority.")

[18] WC Docket No. 08-33, *Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Embarq")* at 5 (Aug. 13, 2008); WC Docket No. 08-185, *Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc.* at 4 (Dec. 15, 2008).

"a successor IP-enabled 9-1-1 network and NG9-1-1 systems technologies," the Texas 9-1-1 Entities Comments call for the promulgation of "a comprehensive 'local competition' type order on 9-1-1 network services and IP-enabled 9-1-1 and NG9-1-1 systems," perhaps even "a stand-alone docket to consolidate all issues related to the transition to NG9-1-1."[19] In "working cooperatively with states" to craft such a comprehensive order, the Commission would necessarily take into account the needs of state and local public safety authorities nationwide in a neutral fashion, mitigating "the unreasonableness of seeking to prejudice the rights of public safety entities in arbitration proceeding rulings."[20] Nonetheless, the Commission has the ability to address the discrete interconnection issues in this arbitration on an expedited basis in favor of Intrado, without delivering a comprehensive verdict on "complex factors related to institutional and service arrangements, equipment and infrastructure, and funding."[21] As the Independent Telephone & Telecommunications Alliance ("ITTA") explained, "the instant arbitration proceedings must first address the question of whether Intrado is entitled to interconnection under Section 251(c)(2). . . . although the Commission should address the question of potential impacts of competitive 911 service, that matter is best addressed in a proceeding dedicated to that issue."[22] As a matter "governed by existing law . . . [it] should be addressed within the adjudicatory process of the arbitration proceedings that have been deferred to the Commission."[23]

General rulemaking is also the best place to address issues of funding. As the ITTA pointed out, "[m]any issues are implicated by the compact questions presented by the Public Notice," such as whether "competitive provision of 911 services [should] be affected by state or

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19 Texas 9-1-1 Entities Comments at 7-9, n. 22.

20 *Id.* at 10-11.

21 *Id.* at 14 (citing Next Generation 9-1-1 System Initiative - Final Cost, Value and Risk Analysis Executive Summary, http://www.its.dot.gov/ng911/ng911_pubs.htm).

22 WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration* Proceedings, Comments of the Independent Telephone & Telecommunications Alliance at 2 (filed July 6, 2009) ("ITTA Comments").

23 *Id.* at 5.

local funding mechanisms, or other local-level regulations," or "whether, or how, end-user customers that pay the 911 fees might be affected."[24] The Commission's responsibilities on these issues under such statutes such as the NET 911 Act contemplate broad oversight rather than case-by-case adjudication.[25] It is thus necessary for the Commission to "first settle the legal questions presented by the arbitration before moving on to the policy questions that may, or may not, subsequently arise."[26]

The overall implementation of competitive 911/E911 services should not in any case be delayed by detailed rulemaking addressing technical concerns. Though Intrado concurs with the ITTA that the Commission must promptly settle outstanding interconnection issues in the instant proceeding, it disagrees with the conclusion that the Commission must determine "how a particular provider's platform would affect a PSAP operator's equipment needs, reliability in routing, and changes in transport costs, all of which will ultimately need to be recovered through 911 fees assessed to the customers" before sanctioning a "competitive 911 service provider's service offering."[27] From the date of its implementation, the 911 network has rejected hard and fast technical standards in the name of flexibility, adaptability, and immediate usability. As FCC Defense Commissioner Lee Loevinger observed in 1968, "[i]t is conceded that there may very well be better systems developed in the future, and new techniques and new equipment may permit means of employing the telephone which are not now practical. However, the 911 plan has been devised and offered by the Bell System as *a plan that is practical and immediate*, and that can be put into operation quickly. *It is not offered as a final and unchangeable system*."[28]

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[24] *Id*.

[25] *See, e.g., Information Collection Mandated by the New and Emerging Technologies Improvement Act of 2008*, Public Notice, 24 FCC Rcd 1344 (2009).

[26] ITTA Comments at 6.

[27] *Id.* at 5.

[28] Lee Loevinger, *The Universal Emergency Service Number - The Problems and Some Answers -*, Lee Loevinger Correspondence (Feb. 27, 1968), http://www.911dispatch.com/911/history/loevinger_letter1.html.

Much of the Commission's federal role in regards to 911/E911 service is thus one of "encourag[ing] the most efficient and effective technologies" in regards to accurate and advanced emergency communications service.[29] Specific technological implementation may be delegated downward to the regional, state or local level,[30] as "the subject of emergency calls is an area that the Commission has traditionally left to the states."[31] As the House Report for the 911 Act noted, encouragement and assistance in the development and implementation of end-to-end systems envisions direct "consult[ation] with key State officials (the heads of the lead agencies affected, *e.g.*, State public safety, State EMS, and the like), key local officials (*e.g.*, heads of 911 agencies), and a variety of other stakeholders ranging from medical professionals to transportation officials to automobile consumer groups," as the "key stakeholders" best equipped to tailor new technologies to local needs.[32] Technical concerns may also properly be left to industry, as the Commission has done in the commercial mobile alert system,[33] telematics,[34] and mobile radio service contexts.[35] Ultimately, the PSAPs, positioned at the nexus

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[29] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, Memorandum Opinion and Order, 12 FCC Rcd 22665, ¶ 5 (1997).

[30] Likewise, the Commission has refrained from "limiting or prohibiting the States in the creation of cost recovery procedures that include carriers' expenses, or preempting any existing cost recovery legislation." *Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, Second Order on Reconsideration, 14 FCC Rcd 20850, ¶ 54 (1999) ("*E911 Second Order*").

[31] *Policies and Rules Concerning Operator Service Providers*, Report and Order, 6 FCC Rcd 2744, ¶ 1 (1991) ("establish[ing] rules for operator service providers (OSPs) and call aggregators regarding consumer information, call blocking, restrictions on certain charges, and equipment capabilities"); *see also* H. R. Rep. No. 106-25, 8 (1999) (while the "end-to-end emergency communications systems contemplated by the [911 Act] cannot be entirely developed in many or most cases on a city by city, or county by county basis . . . local government will play a central planning and implementation role").

[32] H.R. Rep. No. 106-25, 8.

[33] *Commercial Mobile Alert System*, First Report and Order, 23 FCC Rcd 6144, ¶ 24 (2008), *order corrected on recons. by* 23 FCC Rcd 11669 (2009) ("We support the technical protocols and specifications for the delivery of alerts recommended by the [Commercial Mobile Service Alert Advisory Committee] in this section. . . . [and] conclude that final determination of these interface protocols is better left to industry standards organizations").

[34] Intrado Comments at 5.

[35] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Notice of Proposed Rulemaking, 9 FCC Rcd 6170, ¶ 40 (1994) ("While we do not anticipate adopting extensive technical standards for enhanced 911 operation-- *industry standards-setting committees are better equipped to address precise technical requirements for enhanced 911 compatibility* --we propose that general performance criteria be adopted.") (emphasis added).

of state and local emergency concerns, may be the best equipped to assess its own needs in regard to routing and cost recovery vis-à-vis emerging emergency technology, obviating the need for Commission analysis of these issues in the case of the burgeoning 911/E911 service provider.[36]

II. PROVIDERS OF COMPETITIVE 911 SERVICES WILL BRING THE FULL BENEFITS OF COMPETITION TO PSAPS AND 911 CALLERS MORE SWIFTLY AND COMPREHENSIVELY WITH INTERCONNECTION ARRANGEMENTS THAT RECOGNIZE THE UNIQUE NATURE OF 911 SERVICES

As Intrado explained in its initial comments, there are a myriad of benefits that Internet protocol ("IP") can be bring to existing 911/E911 services, with resulting benefits to consumers and public safety agencies alike. An architecture that provides for seamless and platform-independent integration of IP-based voice and data into conventional emergency networks is the foundation for the future of emergency communications. Several commenters evinced similar conclusions. The Washington State Enhanced 911 Program, for example, depicted "[t]he move to Internet Protocol based call management for 9-1-1" as a natural outgrowth of the diversifying competitive telecommunications market, a "continu[ation] [of] the trend toward[s] multiple source availability for the elements needed to provide 9-1-1 services."[37] In explaining the need for a "local competition" type order for emerging 911 technologies, the Texas 9-1-1 Entities Comments explained that "in IP-enabled 9-1-1 and NG 9-1-1 systems, the core operating system and intelligence of the 9-1-1 CPE functionality may be in a hosted location within what might have been thought of in the past as the 9-1-1 network."[38] Accordingly, "9-1-1 will increasingly

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[36] *See E911 Second Order*, ¶ 23 ("We note here that we do not dictate the funding approach to be used. The key is that PSAPs have a source of funds sufficient to support E911, not that any particular funding approach is employed."); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fifth Memorandum Opinion and Order, 15 FCC Rcd 22810, ¶ 24 (2000) ("As we concluded, by removing the cost recovery issues that were obstacles to such implementation, carriers and the states or PSAPs could better resolve these and related differences, such as technology choice, to accelerate implementation.").

[37] Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of the Washington State Enhanced 911 Program at 2 (July 6, 2009) ("Washington Comments").

[38] Texas 9-1-1 Entities Comments at 15.

be one application on shared emergency services IP networks ("ESInets") as opposed to single-purpose 9-1-1 networks."[39]

The journey to this nationwide network of multiple source, IP-based emergency services must of necessity begin with one step - that of meaningful interconnection that recognizes 911/E911 system's special need for reliable and consistent operation.[40] Intrado agrees with the Washington State E911 Program's observation that "a discussion of appropriate regulatory changes" is necessary "to forward a competitive 9-1-1 services environment."[41] As 911/E911 service begins to enter "a competitive arena," it is indeed to "the long term benefit of the public [that] the rules that govern the relationship between those who assure that their customers can dial 911 and those who acquire the 9-1-1 networks . . . be clarified."[42] Incumbent local exchange carrier ("ILEC") control over a monolithic 911/E911 network has waned over the course of the past several decades,[43] as competitive service providers have exercised management over portions of it - Intrado, for example, has provided 911 database management systems to all major ILECs for over 20 years. As full scale competition proceeds apace, it is necessary for the Commission to ensure that competitive 911/E911 networks can integrate themselves into

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39 *Id.* at 14.

40 *See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Services*, Second Report and Order, 14 FCC Rcd 10954, ¶ 2 (1999), *recons. granted in part by* 15 FCC Rcd 1144 (2000) (adopting rules to "improve 911 reliability [and] increase the probability that 911 calls will be efficiently and successfully transmitted to public safety agencies"); Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (1999) (expressing statutory intent to create a "seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs"); *see also Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order, 22 FCC Rcd 10541, ¶ 96 (2007) ("*Katrina Order*"), *extended* 22 FCC Rcd 14246 (2007), *order clarified on reconsideration*, 22 FCC Rcd 18013 (2007) (goal of ensuring that "Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service").

41 Washington Comments at 4.

42 *Id.* at 2.

43 *See* 9IA Comments at 5 ("For years, public safety agencies have had virtually only one choice for 9-1-1 products and services: the incumbent 9-1-1 service provider. Incumbent providers have exercised exclusive, often unilateral discretion as to what those products and services will be and, due to the natural outcomes of rate of return regulation, incumbents have had no incentive to innovate in the 9-1-1 space as they have in other sectors.").

existing ILEC 911/E911 networks just as seamlessly and effectively as have other competitive services. There is no practical or highly safe method to introduce to the public safety marketplace an alternative, competitive system, unless legacy and next generation networks interoperate -- for at least some period of time. Ensuring interconnection between those systems - prior to having answered all the policy questions - is the only realistic means by which competition can be introduced. Just as the ILEC emergency communications network has subsumed competitive automatic number identification ("ANI") or master street address guide ("MSAG") services without loss of quality or functionality for consumers, so too must "any public telecommunications services that permit connecting to the 9-1-1 network have the capability to provide the anticipated service level and features associated with calls to 9-1-1."[44] As Intrado observed in its initial comments, increased redundancy, enhanced reliability, and an end to the artificial limitations of ILEC geographic service areas can be immediately achieved through the use of competitive 911/E911 services, but only if the Commission acts to "balance the Congressional intent of furthering competition in an equitable manner, as expressed in the 1996 Telecommunications Act, with the need to maintain the integrity of the network."[45]

Accordingly, the Commission must ensure "that all service providers have an obligation to, at their expense, connect to the 9-1-1 networks with both the call and the associated data elements delivered to the 9-1-1 system."[46] Today, ILECs typically require CLECs to:

- establish interconnection at a point on the ILEC's network for the transmission and routing of plain-old telephone service ("POTS") traffic[47] with each party being responsible for the transport facilities on its side of that point of interconnection ("POI")[48] ***and***

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44 Washington Comments at 3.

45 PUCO Comments at 4.

46 Washington Comments at 3.

47 *See, e.g.*, Verizon Template Interconnection Agreement, 911 Attachment § 1; AT&T 22-State Template Interconnection Agreement, Appendix NIM.

48 *See, e.g.*, Verizon Template Interconnection Agreement, 911 Attachment § 2.1; AT&T 22-State Template Interconnection Agreement, Appendix NIM.

- to interconnect with each ILEC 911/E911 selective router that serves the exchange areas in which the CLEC offers service[49] ***and***
- to provide a minimum of two one-way outgoing 911/E911 trunks over diversely routed facilities that are dedicated for originating 911/E911 calls from the CLEC's switch to each designated ILEC 911/E911 selective router[50] ***and***
- to compensate the ILEC for the provision of 911/E911 services[51]

Given the importance of interoperability between ILEC and CLEC networks in regards to reliable and efficient 911/E911 service - and the evident utility of these ILEC requirements in achieving it - the Commission should insist on equivalent arrangements between ILECs and competitive 911/E911 services.[52] This is simple parity, reflective of the Commission's long-standing requirement that CLECs (and now, competitive 911/E911 services) should receive interconnection in the same manner that incumbents provide such service to themselves.[53]

The Commission should also heed the Washington State Enhanced 911 Program's call for "a standard point of demarcation for 9-1-1 in conjunction with the requirement that all provide 9-1-1 dialing under the same terms" in order to "forward competition while removing any potential conflicts between carriers selected by public safety entities to provide 9-1-1 system

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49 *See, e.g.*, Verizon Template Interconnection Agreement, 911 Attachment § 3.2.1; AT&T 22-State Template Interconnection Agreement, 911 Attachment §§ 4.1.1, 4.1.2 (stating that "CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-22STATE E911 SR location" and "CLEC shall be financially responsible for the transport facilities to each AT&T-22STATE E911 SR"); Embarq Template Interconnection Agreement at § 55.1.3 (stating "Separate trunks will be utilized for connecting CLEC's switch to each 911/E911 tandem").

50 *See, e.g.*, Verizon Template Interconnection Agreement, 911 Attachment § 3.2.2; AT&T 22-State Template Interconnection Agreement, 911 Attachment § 4; Embarq Template Interconnection Agreement at § 55.1.3 (stating "Separate trunks will be utilized for connecting CLEC's switch to each 911/E911 tandem").

51 *See, e.g.*, Verizon Template Interconnection Agreement, 911 Attachment § 4.2; AT&T 22-State Template Interconnection Agreement, Pricing Appendix.

52 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, Report and Order, ¶ 554 (1996) ("Local Competition Order") (intervening history omitted), *aff'd, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (holding that "if a particular method of interconnection is currently employed between two networks, or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures").

53 *See generally Id.*

management and the carrier provided obligatory 911 dialing capability."[54] The Commission may easily do so by acting in accordance with its *King County* decision, which established that the "cost-allocation point" for the exchange of 911/E-911 traffic should be at the selective router, pursuant to the "the nature and configuration of the existing network components used to provide wireline E-911 service," as well as PSAP comments stating that the selective router was the proper point for allocating responsibility and associated costs between carriers.[55] Given the "primary responsibility" vested in state governments for ensuring 911/E911 availability, and the fact that "different states have taken different approaches to meeting that responsibility," [56] a universally applied framework is needed for a consistent nationwide 911/E911 service to become a reality. Features critical to a truly seamless emergency communications system, such as inter-PSAP call transfers and automatic location steering, can only be ensured by bringing 911 calls to the 911 network through the very equipment that analyzes and distributes them.[57] Only through the adoption of a standard point of demarcation - one that has been consistently validated and utilized by the ILECs themselves[58] - can the Commission implement Ohio's technology-independent "interoperability across carriers, systems, and/or county boundaries" on a nationwide basis.[59]

Commercial agreements - those typically favored by ILECs when confronting interconnection with a competitive 911/E911 network - are not sufficient to secure the "diverse,

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54 Washington Comments at 3.

55 *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems – Request of King County, Washington,* Order on Reconsideration, 17 FCC Rcd 14789, ¶¶ 1-2, 4, n.4 (2002) ("*King County*").

56 PUCO Comments at 6-7.

57 WT Docket No. 94-102, Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Marlys R. Davis, E911 Program Manager, Department of Information and Administrative Services, King County, Washington, King County, Washington Request Concerning E911 Phase Issues (rel. May 7, 2001).

58 *Local Competition Order* ¶ 204 (holding that successful interconnection or access at a particular point in a network, using particular facilities, is substantial evidence that interconnection or access is technically feasible at that point ***or at substantially similar points in networks employing substantially similar facilities***).

59 Ohio Comments at 7.

interoperable facilities" AT&T claims are vital to the evolving 911 network,[60] as evidenced by protracted arbitration over basic terms.[61] One-sided agreements, written in such a way as to maximize the ILEC's revenue streams from its dominant control over the legacy 911 service and minimize its interconnection responsibilities,[62] can raise what the Public Utilities Commission of Ohio described as "a legitimate concern regarding how the existence and operations of a

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[60] WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of AT&T, Inc. at 4 (filed July 6, 2009) ("AT&T Comments").

[61] Embarq states that its constituent "companies and Intrado have successfully reached a commercial agreement in Florida, as well as agreed to certain commercial terms in Ohio, pursuant to Section 251(a), demonstrating the parties' ability to reach mutually agreeable interconnection terms outside of Section 251(c)." Embarq Comments at 6. Embarq's comments fail to take notice of the long arbitration process that occurred before the PUCO, as a result of which Intrado was afforded key interconnection arrangements that were used as the bases for the Florida 251(a) agreement. PUCO Comments at 6. Verizon claims that Intrado does not require "uniquely favorable interconnection arrangements to provide its 911 services." Verizon Comments at 9. AT&T echoes Verizon's statement and claims that "[c]ommercial negotiations for wholesale inputs are appropriate mechanisms to enable carriers and SSPs [system service providers] to make the necessary arrangements at mutually acceptable prices." AT&T Comments at 9. All of these claims ignore the myriad arbitration proceedings that Intrado has entered into in an attempt to deploy its competitive 911/E911 services. Negotiations with Verizon, for example, have failed to secure the facilities and services vital to effective 911/E911 competition, as demonstrated by the fact that they have given rise to no fewer than *eight* arbitration proceedings. *See* Delaware Docket No. 08-61, *Petition of Intrado Communications Inc. for Arbitration Pursuant to §252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon Delaware LLC*, Petition for Arbitration (filed Mar. 5, 2008); Florida Docket No. 080134-TP, *Petition by Intrado Communications Inc. for Arbitration to Establish an Interconnection Agreement with Verizon Florida LLC, Pursuant to § 252(b) of the Communications Act of 1934, as amended, and § 364.162, F.S.*, Petition for Arbitration (filed Mar. 5, 2008); Illinois Docket No. 08-0550, *Petition of Intrado Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North Inc. and Verizon South Inc.*, Petition for Arbitration (filed Sept. 24, 2008); Maryland Case No. 9138, *Petition of Intrado Communications Inc. for Arbitration Pursuant to § 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon Maryland Inc.*, Petition for Arbitration (filed Mar. 5, 2008); North Carolina Docket No. P-1187, Sub 3, *Petition of Intrado Communications Inc. for Arbitration Pursuant to § 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. d/b/a Verizon North Carolina*, Petition for Arbitration (filed Mar. 5, 2008); Ohio Case No. 08-0198-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration Pursuant to § 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North Inc.*, Petition for Arbitration (filed Mar. 5, 2008); Texas Control No. 36185, *Petition of Intrado Inc. for Arbitration Pursuant to Pursuant to § 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with GTE Southwest Inc. d/b/a Verizon Southwest*; West Virginia Docket No. 08-0298-T-PC, *Intrado Communications, Inc., and Verizon West Virginia Inc. Petition for Arbitration of Certain Rates, Terms and Conditions for Interconnection and Related Arrangements with Verizon West Virginia Pursuant to § 252(b) of the Communications Act of 1934, as amended, and Commission Rule 150-6-15*, Petition for Arbitration (filed Mar. 5, 2008).

[62] In commercial negotiations, for example, the ILEC directly controls the pace of the negotiations, such as by taking an "all or nothing" approach, refusing to provide language as a starting point for negotiations, or simply rejecting any Intrado-proposed language. These negotiating tactics only further delay public safety's ability to utilize a competitive provider.

competitive 911 carrier affects the public interest in a reliable, efficient, and effective network."[63] To this end, MITA and TelNet attribute "a lack of competition in the E911 market" to ILEC actions that "have thwarted CLEC efforts to obtain and offer competitive 911 services to its customers. . . . limit[ing] competition and creat[ing] technical and financial bottlenecks to hinder numerous aspects of competitive 911 service."[64] Commercial agreements forestall the implementation of "advanced network technology," pursuant to the pecuniary priorities of "incumbents that seek to protect their monopoly positions by exploiting their control over the emergency telecommunications network."[65] Intrado wholeheartedly agrees with MITA and TelNet in their frank assessment that "[s]uch actions" and such unbalanced agreements are "contrary to the spirit of Congress as embraced by the 911 legislation of the past decade."[66]

Arguments concerning the high cost of implementing non-commercial arrangements are unavailing. Verizon claims that Intrado's proposed interconnection arrangements "would effectively shift some of the costs of Intrado's 911 services to Verizon and other carriers and give Intrado an unfair advantage over its competitors."[67] The Virginia Telecommunications Industry Association makes a similar point in detailing an apparent example of Intrado's "competitive advantage" and cost shifting in the state of Virginia.[68] Intrado is not seeking any

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63 PUCO Comments at 6.

64 MITA/TelNet Comments at 2.

65 *Id.* at 3.

66 *Id.* at 2.

67 Verizon Comments at 6.

68 Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of the Virginia Telecommunications Industry Association at 3 (filed July 6, 2009). The Association's comments concerning Intrado's intention to establish a point of interconnection for Franklin County at Raleigh, North Carolina are inaccurate. Intrado will be conducting a pilot or trial with Franklin County. Intrado has not deployed its selective routers in Virginia yet as it does not have interconnection agreements with any VA ILECs. As Intrado has testified in numerous arbitrations, it intends to have selective routers in every state it has PSAP customers. *See Petition for Arbitration to Establish an Interconnection Agreement with Bellsouth Telecommunications, Inc., dba AT&T North Carolina,*, Hearing Transcript Vol. 1, 231 (Aug. 13, 2008) ("AT&T North Carolina Arbitration Transcript") (noting Intrado's policy of "put[ting] a minimum of two in every state"); *see also, e.g.*, DTC 08-9, *Intrado Communications, Inc. - Verizon New England*, Hearing Transcript Vol. 1, 87 (Jan. 28, 2009); No. 08-0545, *Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Hearing Transcript, 70 (Dec. 3, 2008); Case No. 07-1280-TP-ARB, *Petition of*

sort of competitive advantage, but merely the universal and equitable implementation of the interconnection arrangement designed and instituted by ILECs,[69] established and verified by the PUCO[70] for competitive 911 service to Ohio PSAPs, and validated by the Commission under *King County*. Further cost prognostications - such as unsupported predications of Commission interference with state funding and planning boards - overlooks the Commission's crucial (but limited) state 911 funding oversight and reporting function under the NET 911 Act.[71]

The prospective cost concerns voiced by ILECs are likely a protest against the deprivation of a lucrative monopoly revenue stream. At present, CLECs are required by ILECs to bear all costs associated with reaching the ILEC-served PSAPs, with no possibility of recovery from the state 911 fund. As the sorts of non-commercial interconnection arrangements contemplated by the PUCO are adopted, both competitors and incumbents will incur trunking and routing costs in building out to particular interconnection points, and current state funding arrangements will either be altered or wholly disappear.[72] As MITA and TelNet observed,

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Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934 *as amended, to Establish an Interconnection Agreement with the Ohio Bell Telephone Company dba AT&T Ohio*, Hearing Transcript Vol. 1, 43-48 (Oct. 14, 2008); Docket No. 070736-TP, *Petition by Intrado Communications, Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with Bellsouth Telecommunications, Inc. d/b/a AT&T Florida, Pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162 F.S., and Rule 28-106.201, F.A.C.*, Hearing Transcript Vol. 2, 192-93 (July 10, 2008); Docket No. 070699-TP, *Petition by Intrado Communications Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with Embarq Florida, Inc., Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, and Section 364.162, F.S.*, Hearing Transcript Vol. 1, 124-25 (July 9, 2008). This will include Virginia. The pilot, however, will permit Intrado and Franklin County to begin important preliminary testing of the system and services prior to service activation.

[69] This includes the use of direct, dedicated connections for the transport of 911/E911 calls. In commercial negotiations, the ILECs are demanding the ability to "transit" 911 calls from other carriers. As evidenced by the ILECs' current 911 interconnection arrangements, such network arrangements have never been contemplated or employed for emergency communications due to the increased risk of call failure.

[70] *See* PUCO Comments at 5-6.

[71] *See Implementation of the NET 911 Improvement Act of 2008*, Report and Order, 23 FCC Rcd 15884, ¶ 31 (2008) (detailing polling and reporting functions for states and holding that the Commission has no responsibility "to issue detailed regulations regarding the pricing methodology under which E911 capabilities must be made available" in light of Congressional direction to ensure that attendant "rates, terms, and conditions must *in all instances be reasonable*") (emphasis in original).

[72] *See, e.g.*, Ohio Case No. 07-1199-TP-ACE, *Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Entry on Rehearing at 10 (Apr. 2,

incumbents have every reason to employ their "overwhelming economic power" and "systematic 'go ahead and sue me' attitude" to prevent such an occurrence.[73] TelNet explained its own disastrous experience in attempting to purchase E911 service and facilities from a competitive provider. The incumbent, it explained, "refused to process TelNet's disconnection orders and continued to charge TelNet for such no longer needed service," threatening trunk disconnection upon non-payment that would have effectively ended TelNet's business. Insisting that TelNet "maintain dedicated trunks to each selective router and that 911 traffic from no CLEC other than TelNet could be combined and transported on such trunks," the incumbent effectively "maximized [its] revenue at the expense of each CLEC in the state and prevented the development of a more robust and flexible wireline E911 to protect the public."[74] Thus, Verizon's claim that "Intrado's proposal would negatively affect every carrier that sends 911 calls to Intrado-served PSAPs. . . . [because all] other carriers would have to implement the same direct-trunking/mystery end-office call-sorting arrangements Intrado demands of Verizon here"

2008) ("the Finding and Order in this case addresses the pricing of an enhanced, next generation 9-1-1 system, which incorporates new costs not previously contemplated by the Commission and not currently being recovered by State and subscriber-funded investment"); Ohio Case No. 08-287-TP-UNC, *Petition of the NENA/APCO Joint Task Force Requesting the Commission to Promulgate Rules and Set Standards Governing Next Generation 9-1-1 in a Competitive 9-1-1 Market*, NENA/APCO Petition for Rulemaking at Attachment A (filed Mar. 21, 2008) (requesting a rulemaking to address "[p]arity among all providers and with respect to multiple topics, including funding and interconnection rights to mention just a couple, [which] remains an important policy goal necessary to balance the need to maintain high standards with the need to preserve a level playing field"); Ohio Case No. 08-287-TP-UNC, *Petition of the NENA/APCO Joint Task Force Requesting the Commission to Promulgate Rules and Set Standards Governing Next Generation 9-1-1 in a Competitive 9-1-1 Market*, Letter from Ronald W. Bien, Hamilton County, Ohio, to Renee Jenkins, PUCO at 2 (filed May 9, 2008) ("Ohio's 'bill and keep' rules currently impede public safety's ability to realistically choose a competitive provider. Using Hamilton County as an example: CBT is allowed to bill and keep wireline surcharges if they are providing 9-1-1 service to Hamilton County. If Hamilton County engages a CESTC (as it has done), there is no current mechanism by which Hamilton County or its CESTC can step into CBT's shoes to collect those wireline surcharges. . . . Hamilton County urges the Commission to evaluate and take necessary steps to remove these barriers."); 9-1-1: The Next Generation, 9-1-1 MAGAZINE (January/February 2007) (noting that current funding methodologies serve as a roadblock to enabling next generation 911 services); *see also* New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283 (acknowledging that a review of 911 funding issues will be necessary to effectively implement nationwide 911 services by requiring the Commission to evaluate state funding methodologies and report to Congress); *see id*. (requiring the E-911 Implementation Coordination Office to develop and report to Congress on a national plan for migrating to a national IP-enabled emergency network, including identification of barriers that must be overcome and the funding mechanisms to address those barriers).

[73] MITA/TelNet Comments at 3-4.

[74] *Id.* at 3.

rings true only for the entity that has heretofore maintained an exclusive grip on 911 service provision to PSAPs and interconnection.[75] 9IA also addressed Verizon's overstated and unsupported claims. "While a model that involves multiple 9-1-1 service providers could drive some initial non-recurring costs to 're-home" inbound circuits' (access to selective router),[76] those costs will diminish, be offset, and eventually reduced as a result of implementing a NextGen 9-1-1, IP-based network architecture, *i.e.*, decreased number of circuits needed and decreased costs to interconnect and interoperate with another IP-based system (as compared to costs in a legacy environment)."[77]

Intrado therefore urges the Commission to adopt the conclusion of the PUCO in declaring that Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act") "provide sufficient flexibility to accommodate" the interests of the several states in an "efficient reliable and effective 911 system" and in "new or emerging technologies."[78] In the CLEC context, the

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[75] Verizon Comments at 11. Intrado addressed Verizon's aside to "call-sorting arrangements" in WC Docket Nos. 08-33 and 08-185, *Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Embarq");Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc. (collectively, "Verizon")*, Reply of Intrado Communications of Virginia Inc., 8, n. 8 (filed Jan. 29, 2009). Intrado stated: "It is important to note that Verizon requires the CLEC to route all 911 calls to the 'designated' selective router. This means the CLEC must sort its 911 calls in order to determine which Verizon selective router should receive the 911 call. Verizon requires this sorting of wireless carriers who need to complete their customer 911 calls to Verizon PSAP customers also. Thus, while Verizon and other ILECs complain they cannot sort their 911 calls without switching the call through their selective routers, they expect everyone else in the industry to do just that.").

[76] Noting that "The costs would not be duplicative since there is only one 9-1-1 service provider serving a given PSAP." 9IA Comments at 7, n. 20.

[77] *Id.* at 7-8. This is certainly true for Intrado provided 911 services over its Intelligent Emergency Network®. Service providers interconnecting at two points on the Intrado network will have redundant access to all PSAPs served by Intrado throughout the entire United States. Today, ILECs require interconnection at every ILEC selective router in every designated geographic service area of the ILEC. *See supra.* pp. 11-12. This can require a CLEC to have as many as 11 points of interconnection in one state for a single ILEC to complete only 911 calls to ILEC-served PSAPs. AT&T North Carolina Arbitration Transcript at 233-34.

[78] PUCO Comments at 8-9. The PUCO's conclusion concerning the centrality of meaningful, equitable interconnection arrangements to competitive 911/E911 services is wholly separate from its legal analysis of Intrado's amenability to such interconnection arrangements. "[I]n the arbitration proceedings between Intrado and the various dominant ILECs in Ohio," The PUCO determined that Intrado is a telecommunications carrier entitled to interconnection rights under Sections 251 and 252 from an assessment of 47 U.S.C. § 153 and Commission precedent concerning the rights afforded CLECs and the

Commission has specifically recognized that "commercial negotiations" (*i.e.*, a commercial agreement) would not be feasible given the ILECs' "incentives and superior bargaining power," and would ultimately fail to afford the interconnection necessary for competitors to "compete directly with the [ILEC] for its customers and its control of the local market."[79] Sections 251 and 252, intended to ensure that all competitors get access to the public switched telephone network ("PSTN") on equal terms, have ameliorated this disparity.[80] There is no reason to assume that the equalizing arrangements between CLECs and ILECs would not operate equally as well in the realm of competitive emergency telecommunications, which depends on access to all end users, including PSAPs, just as much as any other telephone service.[81]

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statutory purpose of 911 service. *Id.* at 6-7.

[79] *Local Competition Order* ¶ 15, 55.

[80] *Id.* at ¶ 167 (recognizing "Congress's stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms" and "ensur[ing] that such agreements do not discriminate against third parties"). Thus, contrary to Embarq, policy and interconnection matters must coexist in this proceeding. Embarq Comments at 4-5. "Policy benefits or drawbacks" such as reliability, routing and redundancy are directly relevant to defining the interconnection rights that Intrado is legally entitled to under the Act. *See also Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (5th Cir. 2003) (holding that "where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by § 251(b) and (c), those issues are subject to compulsory arbitration under § 252(b)(1). . . . Congress knew that these non-251 issues might be subject to compulsory arbitration if negotiations fail. That is, Congress contemplated that voluntary negotiations might include issues other than those listed in § 251(b) and (c) and still provided that <u>*any issue*</u> left open after unsuccessful negotiation would be subject to arbitration by the [state commission]") (emphasis in original). Interconnection with the public switched telephone network is vital to the provision of competitive 911 service and addressing issues of reliability, routing, redundancy, and the transition from a legacy network to an IP-enabled network

[81] Despite Verizon's claim that "all the state commissions that did not reject Intrado's petition outright and that did review Intrado's network architecture proposal have rejected it," (Verizon Comments at 10), the PUCO has embraced and extended Intrado's proposal in *four* separate decisions, including the decision concerning Verizon. *See In the Matter of the Petition of Intrado Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq, Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No 07-1216-TP-ARB, Arbitration Award dated September 24, 2008 (Embarq Award) and Entry on Rehearing dated December 10, 2008 (Embarq Rehearing); *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of* 1934 *as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Case No. 08537-TP-ARB, Arbitration Award dated October 8, 2008 (CBT Award) and Entry on Rehearing dated January 14, 2009 (CBT Rehearing); *In the Matter of the Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of* 1934 *as amended, to Establish an Interconnection Agreement with the Ohio Bell Telephone Company dba AT&T Ohio*, Case No. 07-1280-TP-ARB, Arbitration Award dated March 4, 2009 (AT&T Award) and Entry on Rehearing dated June 17, 2009 (AT&T Entry on Rehearing); *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Verizon*

Meaningful interconnection arrangements will not only "provide potential competitors with opportunities to interconnect with and make use of the [ILEC]'s network and services" in an equitable fashion[82] but will ensure the long-term stability, quality, and responsiveness of the country's 911/E911 systems to federal goals and local concerns, facilitating the transition towards a universal nationwide IP-based emergency communications system.[83] Intrado completely agrees with AT&T that "when the subject matter before the Commission is 911/E911 emergency network services and the life and property-saving missions those services support, public safety must take precedence over other interests."[84] The economic interests of the ILECs must yield to the necessity of affording Intrado physical interconnection arrangements with the PSTN equal to those ILECs have designed for themselves,[85] in order that increasingly "[r]obust,

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North Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. 08-198-TP-ARB, Arbitration Award dated June 24, 2009 (Verizon Award).

82 *Local Competition Order* ¶ 55.

83 AT&T claims that interconnection may disadvantage rural communities, in that "some market entrants may elect to cherry pick PSAP customers in comparatively low-cost, densely populated metropolitan (*i.e.* the most profitable) areas and leave the less profitable, sparsely populated, higher service-cost areas for the carriers of last resort ("COLR") - the ILECs." AT&T Comments at 11. Though Intrado plans to offer its services to PSAPs across the nation, nothing in the Act restricts competitive carriers from selecting particular markets to serve. The history of ILEC barriers to entry in rural markets suggests otherwise -- that though competitors are ready to serve, ILECs have blocked the benefits of competition from reaching rural customers. Indeed, Commission precedent demonstrates that it is the ILECs that have been loath to interconnect in rural markets since the beginning of competition in 1996. *See, e.g., Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, 22 FCC Rcd 3513, ¶ 15 (2007) (rejecting ILEC attempts to avoid Section 251 interconnection obligations to wholesale and rural telecommunications service providers). .

84 AT&T Comments at 3. While the Commission has taken notice of "known costs of unbundling, including reducing the incentives to invest in facilities and innovation and creating complex issues of managing shared facilities" - *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, ¶ 44, n. 131 (2005) ("*Triennial Review Remand Order*") - the Commission has mandated unbundling "to encourage the rapid introduction of competition in all markets, including residential and small business markets. . . . creat[ing] incentives for both incumbents and requesting carriers to invest and innovate in new technologies." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 9 (1996) (subsequent history omitted).

85 For instance, in commercial negotiations, the pricing for ILEC facilities is unrestrained, collocation is generally not permitted, and physical interconnection arrangements are constructed to favor the ILEC. This disparity ultimately raises the total costs to public safety entities when they choose a competitive provider.

reliable, and resilient 911 and E-911 service" can be deployed as rapidly as possible.[86] For Intrado, connection to the PSTN is not merely about recouping a "substantial investment. . . . into building tomorrow's infrastructure," but ensuring that investment guarantees that the "technology for, and functionality of, 911/E911 services [will] continue to evolve, as rapidly as practicable, in order to meet needs and demands (of callers *and* responders) in such increasingly complex local, regional and national emergency response environments."[87]

III. THE COMMISSION SHOULD STRIKE THOSE COMMENTS THAT HAVE RAISED ISSUES BEYOND THE SCOPE OF THE PUBLIC NOTICE AND CONSOLIDATED ARBITRATIONS, AND AMOUNT TO UNTIMELY MOTIONS

Intrado has addressed the comments of Verizon and AT&T in the body of this Reply. Nonetheless, portions of those comments should be stricken as non-responsive to the subject matter of the Public Notice.

Stating that "the Bureau stands in the shoes of the Virginia Commission to consider solely the narrow question that was before that agency," Verizon argues that "Intrado's petition should be dismissed, or even if not dismissed, should be rejected."[88] The ensuing substantive arguments concerning the merits of Intrado's argument before the Virginia Commission, coupled with this statement, effectively transforms much of Verizon's reply into an out-of-time motion to dismiss.[89] Verizon also claims that ". . . this is not a proceeding about 911 competition."[90] In

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86 AT&T Comments at 3.

87 *Id*. at 5.

88 Verizon Comments at 2.

89 *See* 47 C.F.R. § 1.45(b) ("Oppositions to any motion, petition, or request may be filed within 10 days after the original pleading is filed."). The Commission granted Intrado's Petition for Preemption on October 16, 2008. *Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 15008 (2008). Intrado responded to Verizon's Petition for Arbitration on January 9, 2009, and failed to include a motion to dismiss as part of it. WC Docket Nos. 08-33 and 08-185, *Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Embarq")*; *Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. and Verizon*

fact this matter *is* about competition, as a facial perusal of the Public Notice (or a glance at any of the comments filed in response to it) clearly indicates. Verizon's contentions about "Virginia's detailed statutory and regulatory regime" and repeated assertions about the "impropr[iety] [of] undertak[ing] the kind of general policy inquiry contemplated in the Public Notice as part of this arbitration proceeding" should be struck from the record as wholly unresponsive.[91]

AT&T's comments expressing its fear that non-facilities based service competition "chills investment and innovation . . . which is particularly detrimental to 911/E911, where substantial investment is needed to sustain a technologically complex communications evolution to NG9-1-1 service," and that unbundling will "shift significant costs to incumbents," limiting the prospects for "the substantial investment needed to promote and sustain the robust, resilient, and reliable 911/E911 network" are also unresponsive to the scope of this proceeding."[92] These arguments amount to a lengthy diatribe on AT&T's obligations to offer unbundled network services and pricing pursuant to Sections 251 and 252 of the Act. AT&T vividly depicts the pecuniary ramifications of "non-facilities-based competition in which state and federal regulators establish an unbundled, price-regulated regime for 911/E911 network services,"[93] without accounting for the fact that the core of its argument - the facilities-based distinction - is inapplicable to Intrado[94] and irrelevant to market clamor for competitive emergency

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Virginia Inc., Response of Verizon to Petition of Intrado Communications of Virginia Inc. (Jan. 9, 2009).

90 Verizon Comments at 9.

91 *Id.* at 3, 8.

92 AT&T Comments at 2, 7-8.

93 *Id.* at 2.

94 Contrary to AT&T's apparent conclusion, a leased capacity provider is a facilities-based provider under statute and precedent. *See* 47 C.F.R. § 63.09(a) ("Facilities-based carrier means a carrier that holds an ownership, indefeasible-right-of-use, or *leasehold interest* in bare capacity . . . .") (emphasis added); *Clarification of Section 43.61 International Traffic Data Reporting Requirements*, Public Notice, 13 FCC Rcd 12809 (rel. July 9, 1998) (adopting definition of facilities-based service as one "provided using channels of communication which the carrier owns; or in which the carrier has an ownership interest, such as an indefeasible right of use (IRU); or which the carrier leases . . . .").

telecommunications services.[95] Broad invective against the costs of compliance with unbundling obligations adds nothing to the Commission's inquiry in this matter, and should be properly relegated to a petition for forbearance under 47 U.S.C. § 160, or submitted for consideration in the ongoing *Triennial Review Remand* proceedings.

[95] AT&T has admitted that its monopoly control of 911 service has produced unfavorable returns. Docket No. 070736-TP, *Petition by Intrado Communications, Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with Bellsouth Telecommunications, Inc. d/b/a AT&T Florida, Pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162 F.S., and Rule 28-106.201, F.A.C.*, Hearing Transcript Vol. 2, 351 (July 10, 2008) ("911 is not typically a profitable service that attracts competitors"). AT&T's *own* lack of investment in the existing *facilities-based* 911 infrastructure is what has given rise to competition, its unsupported prognostications concerning the economic effects of allegedly non-facilities based competition notwithstanding.

CONCLUSION

Intrado urges the Commission to act in accordance with the majority of comments in this proceeding and remove any remaining barriers to meaningful and equitable competitive provision of 911/E911 services -- beginning with a prompt decision in the pending arbitrations granting Intrado Communications of Virginia Inc. interconnection and the other relief sought therein. Congressional intent and the public safety mandate an embrace of competitive emergency telecommunications services, and fully enabling services like Intrado's Intelligent Emergency Network® to begin to address the nation's many next-generation 911 needs.

Respectfully submitted,

INTRADO INC. AND INTRADO COMMUNICATIONS OF VIRGINIA INC.

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Dated: July 21, 2009

CERTIFICATE OF SERVICE

I, Matthew L. Conaty, certify that on this 21st day of July 2009, I served a copy of the foregoing Comments of Intrado Inc. and Intrado Communications of Virginia Inc. on the following via the method indicated:

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Via Electronic Mail

/s/ Matthew L. Conaty

Matthew L. Conaty